

(2020) 09 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition Stamp No. 8394 Of 2020

Pranaya W/O Ganesh Gaddamwar

APPELLANT

Vs

Collector, Chandrapur And Ors

RESPONDENT

Date of Decision : 25-09-2020

Acts Referred:

Maharashtra Zilla Parishads And Panchayat Samitis Act, 1961 — Section 72(2)
Maharashtra Zilla Parishads Presiding Authorities (No Confidence Motion) Rules, 1962
— Rule 2, 3

Citation : (2020) 09 BOM CK 0043

Hon'ble Judges : R.K. Deshpande, J; Pushpa V. Ganediwala, J

Bench : Division Bench

Advocate : Amit Band, Shashibhushan Wahane, A.A. Madiwale, I.G. Meshram

Final Decision : Allowed

Judgement

R.K. Deshpande, J

1. Rule, made returnable forthwith.
2. Heard finally by consent of learned counsels appearing for the parties.
3. The challenge in this petition is to the 'no-confidence' motion passed in Special Meeting dated 14-7-2020 by the Panchayat Samiti Nagbhid, Taluka Nagbhid, District Chandrapur against the petitioners, who are the Chairman and the Deputy Chairman of the Panchayat Samiti, Nagbhid.
4. It is urged that as per the provision of sub-section (2) of Section 72 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, such requisition has to be delivered to the Collector or it is to be sent to him by the registered post acknowledgment due. It is the Collector under sub-section (3) therein who has to call meeting within seven days from the date of requisition. However, in the present case, the requisition was not delivered personally to the Collector nor was it sent to him by the registered post acknowledgment due. It is urged that the requisition was delivered in the present case, to the Deputy Collector/Deputy

District Election Officer, Chandrapur on 2-7-2020 and the meeting was called on that basis by the Collector by issuing notice dated 3-7-2020.

5. The provision of sub-section (2) of Section 72 dealing with motion of no-confidence against Chairman or Deputy Chairman of Panchayat Samiti being relevant, is reproduced below :

"72. Motion of no-confidence against Chairman or Deputy Chairman of Panchayat Samiti:-

...

(2) The requisition for such special meeting shall be signed by not less than one-third of the total number of members who are for the time being entitled to sit and vote at any meeting of the Panchayat Samiti and shall be delivered to the Collector. The requisition shall be signed by the requisitionists and shall be made in such form and in such manner as may be prescribed by the State Government."

6. Rule 3 of the Maharashtra Zilla Parishads Presiding Authorities (No Confidence Motion) Rules, 1962 dealing with the manner of making requisition, is reproduced below :

"3. "Manner of making requisition.-

(1) The requisition referred to in Rule 2 shall be either delivered personally to the Collector by any one or more of the Councillors signing the requisition or sent to him by registered post with acknowledgment due.

(2) Where the requisition is delivered personally, a receipt stating the date on which the requisition is received by the Collector shall be given to the person or persons delivering the requisition."

7. Sub-section (2) of Section 72 read with Rule 3, reproduced above, makes it clear that the requisition is required to be delivered personally to the Collector or it is required to be sent by the registered post acknowledgment due. The issue is sensitive and hence these aspects are very significant. The object is to rule out the possibility of having any dispute either over the delivery of requisition by the Councillors of the Panchayat Samiti or a receipt of it by a person who is not the Collector. The requirement, in our view, is mandatory, as both the provisions use the word 'shall'. According to us, the 'Collector', as contemplated by the aforesaid provisions is a persona designata and in the absence of any power of delegation, the Collector has to personally receive the requisition by hand delivery or through registered post acknowledgment due.

8. The stand of the respondent No.1-Collector, Chandrapur before us on the affidavit, contained in Para 3, is reproduced below :

" It is submitted that the respondent No.3 to 8 had submitted a requisition for motion of no confidence against the petitioners in the office of the answering

respondent. It is pertinent to mention here that, on 02.07.2020 the Collector, Chandrapur, was on visit to Brahmapuri for Covid-19 review meeting. Therefore, in the absence of the Collector, Chandrapur the Deputy Collector/Deputy District Election Officer, Chandrapur receive the requisition of motion of no confidence and endorsed "please put as per rules". The copy of requisition and the endorsement is annexed hereto and marked as Annexure R-1. The endorsement of receipt of the requisition for motion of no confidence was duly acknowledged and as per the rules contemplated under Sub-section (3) of Section 72 of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1971, the Collector, Chandrapur issued notice dated 03.07.2020 for conveying the special meeting for considering motion of no confidence against the petitioner. The copy of the notice dated 3.7.2020 is annexed and marked as Annexure R-2."

9. It is an undisputed position that the motion of no-confidence was delivered to the Deputy Collector/Deputy District Election Officer, Chandrapur who has made an endorsement "please put as per rules", the requisition is not delivered to the Collector, it was also not sent by registered post acknowledgment due. The calling of the meeting to pass 'no-confidence' motion is, therefore, in total contravention of the aforesaid mandatory provisions. The same, therefore, cannot be sustained.

10. In the result, the writ petition is allowed and the following order is passed :

(1) The motion of 'no-confidence' passed against the petitioners in special meeting of Panchayhat Samiti, Nabhid on 14-7-2020, is hereby quashed and set aside.

(2) The petitioners are directed to be restored in the office.

11. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

12. At this stage, the learned counsels for the respondents submit that the liberty may be given to tender requisition in accordance with law. If it is permissible in law to tender another requisition, it is always open for the respondent to adopt such procedure and there is no need to express any opinion in respect of it in this petition.